

AMENDED IN ASSEMBLY MARCH 25, 1999

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 109

Introduced by Assembly Member Knox

December 23, 1998

An act to add Section 233 to the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 109, as amended, Knox. Employment: sick leave.

Existing law does not require an employer to permit an employee to use sick leave to attend to the illness of a child, parent, or spouse of the employee.

This bill would require an employer who provides sick leave, as defined, for employees to permit an employee to use accrued sick leave, ~~not exceeding~~ *but* in any calendar year *not less than* $\frac{1}{2}$ of the employee's entitlement for that year, to attend to the illness of a child, parent, or spouse of the employee. The bill would apply to the state, political subdivisions of the state, and municipalities.

This bill would prohibit an employer from *denying the use of sick leave or from* discharging, threatening to discharge, demoting, suspending, or in any manner discriminating in the terms and conditions of employment against, an employee for using, or attempting to exercise the right to use, sick leave to attend to the illness of a child of the employee.

This bill would provide that any employee aggrieved by a violation of the bill is entitled to reinstatement and

~~reimbursement for lost wages and work benefits caused by the acts of the employer. The bill would make violations by employers subject to minimum damages of one day's pay actual damages or one day's pay, whichever is greater, and to appropriate equitable relief, as specified. The bill would also specifically authorize collection of amounts due employees under the bill, pursuant to existing law authorizing~~ require the Labor Commissioner, *upon receipt of an employee's complaint*, to invoke administrative procedures or seek judicial remedies to recover wages, penalties, and other compensation on behalf of aggrieved employees. *Alternatively, the bill would authorize an employee to bring a civil action for remedies provided in these provisions and would authorize an award of reasonable attorney's fees to an employee who prevails in the action.* The bill would declare that its rights and remedies are nonexclusive.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 233 is added to the Labor Code,
 2 to read:
 3 233. (a) Any employer who provides sick leave for
 4 employees shall permit an employee to use the accrued
 5 and available sick leave to which he or she is entitled, ~~not~~
 6 ~~exceeding in any calendar year but in any calendar year~~
 7 *not less than* one-half of the employee's sick leave
 8 entitlement for that year, to attend to an illness of a child,
 9 parent, or spouse of the employee. All conditions and
 10 restrictions placed by the employer upon the use by an
 11 employee of sick leave also shall apply to the use by an
 12 employee of sick leave to attend to an illness of his or her
 13 child, parent, or spouse. This section does not extend the
 14 maximum period of leave to which an employee is
 15 entitled under Section 12945.2 of the Government Code
 16 or under the federal Family and Medical Leave Act of
 17 1993 (29 U.S.C. Sec. 2606 et seq.), regardless of whether
 18 the employee receives sick leave compensation during
 19 that leave.

(b) As used in this section:

(1) “Child” means a biological, foster, or adopted child, a stepchild, a legal ward, or a child of a person standing in loco parentis.

(2) “Employer” means any person employing another under any appointment or contract of hire and includes the state, political subdivisions of the state, and municipalities.

(3) “Parent” means a biological, foster, or adoptive parent, a stepparent, or a legal guardian.

(4) “Sick leave” means accrued increments of compensated leave provided by an employer to an employee as a benefit of the employment for use by the employee during an absence from the employment for any of the following reasons:

(A) The employee is physically or mentally unable to perform his or her duties due to illness, injury, or a medical condition of the employee.

(B) The absence is for the purpose of obtaining professional diagnosis or treatment for a medical condition of the employee.

(C) The absence is for other medical reasons of the employee, such as pregnancy or obtaining a physical examination.

“Sick leave” does not include any benefit provided under an employee welfare benefit plan subject to the federal Employee Retirement Income Security Act of 1974 (Public Law 93-406, as amended) and does not include any insurance benefit, workers’ compensation benefit, unemployment compensation disability benefit, or benefit not payable from the employer’s general assets.

(c) No employer shall *deny an employee the right to use sick leave or* discharge, threaten to discharge, demote, suspend, or in any manner discriminate against an employee for using, or attempting to exercise the right to use, sick leave to attend to an illness of a child, parent, or spouse of the employee.

(d) Any employee aggrieved by a violation of ~~subdivision (e) shall be entitled to reinstatement and reimbursement for lost wages and work benefits caused~~

1 ~~by the violation. The employee shall be entitled to~~
2 ~~recover from the employer not less than one day's pay~~
3 ~~under this subdivision as minimum damages for the~~
4 ~~violation, regardless of whether the violation resulted in~~
5 ~~lost wages or work benefits, but any reimbursement~~
6 ~~recovered from the employer under this subdivision shall~~
7 ~~be offset in reduction of the minimum damages.~~

8 ~~(c) An employee may request the assistance of the~~
9 ~~Labor Commissioner under Section 98.3, 98.4, or 98.7 to~~
10 ~~recover amounts due from the employer under~~
11 ~~subdivision (d) or may bring a civil action therefor in a~~
12 ~~court of competent jurisdiction. this section shall be~~
13 ~~entitled to reinstatement and actual damages or one day's~~
14 ~~pay, whichever is greater, and to appropriate equitable~~
15 ~~relief.~~

16 ~~(e) Upon the filing of a complaint by an employee, the~~
17 ~~Labor Commissioner shall enforce the provisions of this~~
18 ~~section in accordance with the provisions of Chapter 4~~
19 ~~(commencing with Section 79) of Division 1, including,~~
20 ~~but not limited to, Sections 92, 96.7, 98, and 98.1 to 98.8,~~
21 ~~inclusive. Alternatively, an employee may bring a civil~~
22 ~~action for the remedies provided by this section in a court~~
23 ~~of competent jurisdiction. If the employee prevails, the~~
24 ~~court may award reasonable attorney's fees.~~

25 ~~(f) The rights and remedies specified in this section~~
26 ~~are cumulative and nonexclusive and are in addition to~~
27 ~~any other rights or remedies afforded by contract or~~
28 ~~under other provisions of law.~~